

## Transitioning from the Farmland Preservation Program to the Working Lands Initiative

The table below describes differences between the Department of Agriculture, Trade and Consumer Protection's (DATCP) previous Farmland Preservation Program and the new Working Lands Initiative. Contact: [DATCPWorkingLands@wisconsin.gov](mailto:DATCPWorkingLands@wisconsin.gov) with questions or for more information regarding changes to the Farmland Preservation Program.

| Category                                | Farmland Preservation Program<br>(Prior to July 1, 2009)   | Working Lands Initiative<br>(July 1, 2009)   |
|---|--|--|
| <b>Farmland Preservation Planning</b>   |  |  |
| Plan certification process              | <ul style="list-style-type: none"> <li>-Required certification by the Land and Water Conservation Board.</li> <li>-Staff review all submissions and make recommendations for certification, denial or certification with conditions.</li> <li>-Minor plan amendments are subject to same review requirements as complete plans.</li> <li>-There is no deadline for turnaround of plan review.</li> </ul> | <ul style="list-style-type: none"> <li>-Required certification by DATCP. Staff have discretion to review plans or to accept self-certification by county.</li> <li>- Certification with conditions is avoided, except where county board has not yet adopted plan at time of review.</li> <li>-Staff have discretion to avoid certification review of minor plan amendments.</li> <li>-There is a 90-day turnaround time for plan review.</li> </ul> |
| Certification expiration date           | No expiration date on original plans. Those submitted since 1995, and approved, were granted 10-year certification terms.  | May be certified for up to 10 years.   |
| Public process                          | Public hearing under s. 59.69 required prior to plan adoption. Copies of the plan or plan amendment must be submitted, at least 60 days prior to the public hearing, to all cities, villages and towns within the county, to the Regional Planning Commission, and to all adjoining counties.  | Requires county to follow 66.1001(4) (comprehensive planning process) for plan adoption. This includes sending copies of the plan or amendment to all cities, villages and towns within the county, to the Regional Planning Commission, and to all adjoining counties.  |
| Focus of Plans                          | Preservation of agricultural land  | Preservation of agricultural land, and economic development of agriculture.  |
| Consistency Requirements                | Ag Preservation Plan must be consistent with and a component of county development plan under s. 59.69   | Farmland Preservation Plan must be included in and consistent with county comprehensive plan under s. 66.1001  |
| Inclusion of Town Ag preservation plans | Ch. 91 recognizes only county ag preservation plans. However, the county ag preservation plan must include municipal ag preservation plans if these comply with requirements under s. 91.55 and s. 91.57,  | Ch. 91 recognizes only county ag preservation plans.   |

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|                                     | Stats. (2007)  |   |
| Preservation areas                  | <ul style="list-style-type: none"> <li>-Established minimum size of 100 acres for each contiguous agricultural preservation area, and 35 acres for each contiguous ag transition area in plan.</li> <li>-Areas must be devoted to agricultural use, though natural resource and open space areas are allowed</li> </ul>  | <ul style="list-style-type: none"> <li>-No minimum size for farmland preservation areas. --</li> <li>- No transition areas allowed.</li> <li>-Areas must be devoted to either primarily ag use, primarily ag-related uses, or both, though natural resource and open space areas are allowed</li> </ul>   |
| Rationale for Exclusion Areas       | Under s. 91.05, Stats. (2007), reasons for excluding areas previously mapped for FP must be provided, and meet one of four criteria.   | All that is required is a general statement identifying differences from the previous plan; no specific rationale for removal of ag preservation lands in previous plan is required.  |
| Planning assistance                 | No grant funding available for plan development  | Planning grants available to reimburse counties for up to 50% of eligible costs to develop plan.  |
| <b>Farmland Preservation Zoning</b> |  |   |
| Ordinance certification process     | <ul style="list-style-type: none"> <li>-Required certification by the Land and Water Conservation Board.</li> <li>-Staff review all submissions and make recommendations for certification, denial or certification with conditions.</li> <li>-Minor ordinance text and map amendments may be subject to same review requirements as comprehensive ordinance revisions.</li> <li>-There is no deadline for turnaround of ordinance review</li> </ul> | <ul style="list-style-type: none"> <li>-Required certification by DATCP.</li> <li>-Staff will review for certification in cases where there is: 1) a comprehensive revision; 2) ordinance coverage is being extended to a new town; or, 3) there are provisions that materially affect compliance with s. 91.38, Stats.</li> <li>- Certification is not required for routine rezones (s. 91.48 (1), and the department may accept self-certification by county for minor ordinance text and routine map amendments submitted (rezones).</li> <li>-Certification with conditions is avoided, except where county board has not yet adopted zoning ordinance at time of review.</li> <li>-There is a 90-day turnaround time for zoning ordinance review.</li> </ul> |
| Certification expiration date       | No expiration date on original ordinances. Those submitted and approved since 1995 were granted 10-year certification terms.   | May be certified for up to 10 years   |
| Uses allowed in FP zoning districts | -Listed permitted and conditional uses; uses “consistent with ag use” as defined in s. 91.01, Stats. (2007);   | <ul style="list-style-type: none"> <li>-Listed permitted and conditional uses;</li> <li>-ancillary uses are permitted uses;</li> <li>- ag-related uses are permitted uses</li> </ul>  |

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|   | <p>-ag-related uses are required to be conditional uses.<br/>           -ancillary uses are required to be “consistent with ag use” or conditional uses.</p>   |   |
| Residential uses  | <p>-Farm residences can be permitted or conditional uses;<br/>           -Non-farm residences are limited to prior nonconforming uses;<br/>           -other residences, which can be classified as permitted or conditional uses, must be found “consistent with ag use” as defined in s. 91.10, Stats. (2007), and occupied by the owner, or current or former family members of the farm owner or operator.</p> | <p>-Farm residences, including SF or duplex structures, occupied by owner, farm family members or migrant labor camp under s.103.92, Stats. are permitted uses;<br/>           -Non-farm residences up to four in number, that don’t exceed a 1:20 density ratio to farm acreage on the base farm parcel, and meeting requirements of s. 91.46 (2) for consistency with ag use are permitted uses as part of a non-farm cluster conditional use.<br/>           -Individual non-farm residences must be a conditional use (see s. 91.44(1))</p> |
| Minimum lot sizes   | <p>Local government must adopt a minimum lot size for parcels in exclusive ag districts; this lot size is at their discretion. Lot size may be more restrictive than the minimum 35 acres required in order to collect the tax credit.</p>   | <p>There are no minimum lot sizes required by statute in farmland preservation districts, but local governments may establish one. The density ratio for non-farm residences may be more restrictive than the 1:20 ratio to farm acreage in s. 91.46 (2)(a)</p>   |
| Requirements for rezoning land out of certified ag zoning districts | <p>Lands rezoned from an exclusive ag zoning district must be suitable for development with adequate public facilities, and not have an adverse impact on soil erosion or water pollution.</p>   | <p>Lands rezoned from FP zoning district must not impair or limit ag use on surrounding parcels, must be consistent with certified FP plan and adopted county comprehensive plan, must be better suited for non-farm use, and must not be able to be accommodated as a conditional use</p>  |
| Conversion Fee for rezoning parcels out of certified district       | <p>Rezoning lien placed on property based upon the credits received during the last 10 years, plus interest. If the government initiates the rezone, they pay the lien. This lien was never collected by department.</p>   | <p>The requirement that any land rezoned out of a farmland preservation district that the owner initiating the rezone must pay a per acre conversion fee <u>was repealed in 2011.</u></p>   |
| Notification of rezones to the state                                | <p>Local government is required to notify DATCP of each rezoning out of EAZ; in practice this was left to discretion of local governments and not audited.</p>   | <p>Local government must submit the a report to the state by March 1 that states the aggregate acreage rezoned out of FP zoning districts, including a map.</p>   |

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| Notification of conditional use adoption    | Local government is required to notify DATCP of conditional use permits granted within EAZ districts; in practice this was not enforced.   | There are no requirements for reporting to DATCP  |
| Farm Family Businesses                      | Non-farm businesses allowed as a conditional use, if limited to existing farm residences or structures, portions of existing farmstead not dedicated to ag use, and utilizing no more than 2 non-family employees.   | Non-farm businesses allowed as a permitted use if limited to existing farm residences or structures that are an integral part of an ag use, that does not impair or limit current or future ag use on the farm, or on other parcels under FP zoning or agreements, and that utilizes no more than 4 full-time employees annually.   |
| Farm Consolidations                         | Where two or more farm operations are consolidated, residences separated from a larger farm parcel as a result of the consolidation can be permitted or conditional uses, not subject to lien under rezoning.  | Not addressed   |
| Classes of Conditional Uses                 | Limited to ag-related, religious, utility, institutional and government uses consistent with ag use, and necessary after considering alternative locations available for such uses; nonmetallic mineral extraction if subject to locally approved reclamation plan; farm family businesses, or to ag uses, ancillary uses or residences qualifying under s. 91.75 (2), Stats. (2007) at discretion of local government | Limited to uses specified under s. 91.46. This includes government, institutional, religious and non-profit community uses, nonmetallic mineral extraction, licensed oil and gas exploration, qualifying non-farm residences and residential clusters, transportation, communications, pipeline, electric transmission, utility and drainage uses, as well as ag, accessory and ag-related uses at discretion of local government. Subject to requirements of livestock siting law, s.93.90, Stats. |
| Consistency with Farmland Preservation Plan | Exclusive Ag zoning ordinance must be consistent with the certified Ag Preservation plan. All land zoned for exclusive ag must be in designated ag preservation or transition area of the plan.  | Farmland Preservation zoning ordinance must be “substantially consistent” with the certified Farmland Preservation plan. All land zoned for Farmland Preservation must be in a designated farmland preservation area of the plan.   |
| “Consistency with Ag Use” Provision         | All non-ag uses, conditional or otherwise, as well as structures or improvements must be “consistent with ag use” as defined in s. 91.01, Stats. (2007), i.e. the activity will not convert land devoted primarily to ag use, limit potential ag use on surrounding land, conflict with ag operations on land subject to an  | Similar content to the previous statutory provision on “consistency with ag use” is provided for conditional uses, but not in general. Conditional uses must be consistent with the purpose of the FP zoning district, be sited reasonably and appropriately after considering alternative locations, be designed to  |

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|                                | agreement, or conflict with ag operations on other properties.  | minimize conversion from or damage to land in ag use, and not substantially impair to limit current or future ag use of surrounding parcels under FP zoning or agreements.   |
| <b>Tax Credits</b>             |   |  |
| Eligibility                    | Farmland owned must be 35 acres or more of contiguous land devoted “primarily to ag use”, and provide at least \$6,000 of gross farm profits (or \$18,000 over last 3 years), or be enrolled in the Conservation Reserve Program  | There is no minimum acreage required to collect the tax credit. Farmland must be in common ownership and devoted “primarily to ag use”, and provide at least \$6,000 of gross farm profits (or \$18,000 over last 3 years), or be enrolled in a farm commodity or conservation program   |
| Tax Credit Calculation         | Complicated formula to compute tax credit based on landowner’s household income and excessive property taxes accrued. The schedule of credit amount increases with property taxes accrued, and decreases with household income up to a maximum \$4,200 a year. (s.71.60, Stats. (2007))   | Flat rate, not based on income or property taxes paid; based only on the qualifying acreage of land in parcel devoted primarily to ag use multiplied by fixed rate per acre. No maximum tax credit. (s.71.613 (2))   |
| Different Levels of Tax Credit | <ul style="list-style-type: none"> <li>-Landowners collect 100% of computed credit if their land is under a certified exclusive ag zoning (EAZ) ordinance and ag preservation plan.</li> <li>-Landowners can collect 80% of computed credit if they are under an individual agreement.</li> <li>-Landowners can collect 70% of computed credit if they are under EAZ but not under a certified ag preservation plan.</li> <li>-Those under an agreement or EAZ are guaranteed a minimum credit of 10% on property taxes up to \$6,000.</li> </ul> | <ul style="list-style-type: none"> <li>-Landowners can collect \$5 per acre credit if their land is under an individual agreement, and after July 1, 2009, within a certified Ag Enterprise Area.</li> <li>-They can collect \$7.50 per acre if their land is within a certified Farmland Preservation Zoning District. -</li> <li>-They can collect \$10 per acre if their land is both under an individual agreement within an AEA, and within a FP zoning district. In all cases, to collect, they must be on land designated for farmland preservation under a certified FP plan.</li> </ul> |
| <b>Agreements</b>              |   |  |
| Land Eligibility               | -Eligible land must be in either an ag preservation area or transition area of the certified county ag preservation plan map; <b>or</b> under a certified EAZ ordinance even if the county lacks a certified ag   | -Requires location within an agricultural enterprise area certified by DATCP, <b>and</b> within a farmland preservation area of a certified county ag preservation plan. Application for AEA certification requires  |

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|   | preservation plan.<br>-Land is not eligible in counties with population density of over 100 persons per square mile unless the county has a certified EAZ ordinance  | landowners of five eligible farms, and the local government's participation.<br>-Land which is expected to develop within 15 years (i.e. formerly transition areas) is not eligible.  |
| Criteria for Review of Application        | County reviews agreement application based on criteria in s. 91.13 (4) including productivity of ag land, predominance of ag use, consistency with certified ag plan, in addition to eligibility of land, and other discretionary county criteria consistent with Ch. 91 | County reviews agreement application based only on eligibility of land, specifically: 1) is land in FP area of certified FP plan map; and 2) is land within a certified Ag Enterprise Area. There is no county discretion in review criteria. |
| Relinquishment                            | Owner may apply to the LWCB for an agreement relinquishment; a lien against the property assessed for the total amount of all credits received by all owners of such lands during the last 10 years plus compounding interest  | Requires payment of a per acre conversion fee equal to three times the per acre value of the highest class of tillable ag land present in the municipality.   |
| Conditions for Relinquishment             | Requires approval of local government based on "consistency with ag use" and approval of LWCB  | Requires approval by DATCP based on condition that it "will not impair or limit ag use" of other farmland under FP zoning or under agreement.   |
| Agreement length                          | Not less than 10 years nor more than 25 years  | At least 15 years   |
| Transition area agreement                 | Allowed  | Not allowed   |
| <b>Monitoring and Reporting</b>           |  |   |
| Soil and water standard compliance checks | Checks required every 6 years  | Checks required every 4 years   |
| Soil and water standards                  | Requires county to develop standards and get approval from the LWCB based on ATCP 50.04 and 50.16, and s.92.104 and s.92.105, Stats. (2007)  | Relies on state standards identified in ch. 281 and ch. 92. (See s. 92.05 (3) (c) & (k); s. 92.14 (8); and s. 281.16(3) (b) &(c), Stats.)   |
| PACE easements                            | Not applicable   | State and county or local co-holder of easement will enforce the easement.  |
| Rezoning reports                          | Requires notification of rezoning, no timeframe. Self-reporting, no DATCP oversight.   | Requires a report on the number of acres rezoned, a map of the location of the rezoned acres, the total amount of conversion fees collected   |
| <b>Definitions</b>                        |  |   |

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| Agricultural Use                   | Beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; forest <b>and</b> game management; grazing; livestock raising; orchards; plant greenhouses and nurseries; poultry raising; raising of grain, grass, mint and seed crops; raising of fruits, nuts and berries; sod farming; placing land in federal programs in return for payments in kind; owning land, at least 35 acres of which is enrolled in the conservation reserve program; participating in milk production termination program; vegetable raising. | Crop or forage production; keeping livestock; beekeeping; nursery, sod or Christmas tree production; floriculture; aquaculture; fur farming; forest management; enrolling land in a federal agricultural commodity payment program, or federal or state ag land conservation payment program. |
| Consistency with Ag Use            | Defined in s. 91.10, Stats, (2007)  | Similar content incorporated for conditional uses into s. 91.46(2)(c), s. 91.46 (4), s. 91.46 (5) and s. 91.46 (6)  |
| Land devoted “primarily to ag use” | Must have been in ag use for at least 12 months of the preceding 36 months.   | Not defined   |
| Development                        | “Development” means change to any use other than agricultural use (s. 91.01 (4), Stats. (2007))   | Agricultural development is distinguished from non-agricultural development, with the former consistent with ag preservation; some ag-related uses are allowed as a permitted use in FP zoning districts, and allowed within farmland preservation areas of the FP plan                       |